



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-37/56917

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Marathon County Dept. of Human Services in regard to Medical Assistance (MA), a telephone hearing was held on July 22, 2003. Hearings previously set for March 24, April 24, May 21 and June 18 were all rescheduled at petitioner's request.

The issue for determination is whether petitioner's community spouse is entitled to an increase in her income allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Ruth Jakubowski
Aging & Disability Resource Center
1000 Lakeview Drive
Wausau, WI 54403

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, P.O. Box 309
Madison, WI 53707-0309

By: Linda Dockstader, ESS
Marathon County Dept. Of Human Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Kenneth P. Adler
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Marathon County. He resides in a skilled nursing facility.

2. On February 8, 2002 an application for MA under spousal impoverishment rules was filed on petitioner's behalf.
3. On February 12, 2002 MA eligibility was granted with a community spouse income allocation established at \$2,232 – the maximum amount the county agency could set.
4. On February 11, 2002 petitioner filed a fair hearing request seeking to have the spousal income allocation increased. A fair hearing was conducted on March 26, 2002.
5. On April 2, 2002 the Division of Hearings & Appeals issued an order increasing the spousal income allocation to \$2,700 and ordering that amount be issued.
6. On February 17, 2003 petitioner filed a fair hearing request seeking to have the community spouse income allocation again increased. In fact, petitioner was requesting an increase in the minimum monthly maintenance needs allowance.
7. Petitioner's monthly income consists of a railroad retirement and other pension totaling \$2,159.81 per month.
8. Petitioner's community spouse has monthly income of \$1,208 per month.
9. Petitioner's spouse has \$3,162.10 in monthly expenses. Those expenses are detailed in Exhibit #1.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the income considered necessary to maintain the community spouse in the community. The current maximum level is set at \$2,266.50 if housing costs exceed \$580.50. *MA Handbook*, Appendix 23.6.0.

An administrative law judge (ALJ) can grant an exception to this limit on community spouse income. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat., §49.455(8)(c), emphasis added. Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs.

In this particular case petitioner previously petitioned to have his community spouse's needs be placed above the statutory set "minimum monthly maintenance needs *allowance*." Doing so subsequently increases the community spouse income *allocation* from petitioner. This, in turn, decreases the amount he is

required to pay the nursing home toward his cost of care and requires the state MA program to pay a greater share of his nursing home expenses.

In prior decision MRA-37/52414 this office concluded petitioner's community spouse met the requirements for an increase above the statutory "minimum monthly maintenance needs allowance." However, that decision directed the county to recalculate petitioner's cost of care "taking into account an increased community spouse income allotment of \$2,700 per month" That terminology was somewhat confusing to the county as it was not clear whether the term "allotment" referred to the minimum monthly maintenance needs "allowance" or the community spouse income "allocation." The Order confusingly classified the "community spouse income allotment" as \$2,700 when in fact that figure reflected the amount determined necessary for the community spouse to avoid financial duress. Therefore, it would have been clearer to note the community spouse income "allocation" was \$1,450 (\$2,700 monthly need of community spouse – income of the community spouse = the community spouse income allocation from petitioner).

This year the community spouse's expenses have increased slightly and her income remains almost the same. Based upon the information presented in the record and marked Exhibits 1 & 2, I am persuaded petitioner's community spouse requires \$3,162 per month to avoid financial duress. The calculation of the community spouse income allocation from petitioner is detailed in the ORDERED section which follows.

CONCLUSIONS OF LAW

1. That the minimum monthly maintenance needs *allowance* must be increased above the statutory limit as petitioner's wife requires \$3,162 per month to avoid financial duress.
2. That petitioner's cost of care will be reduced as the amount he pays to his wife via the community spouse income *allocation* must be increased to meet the new minimum monthly maintenance needs *allowance*.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county agency with the following instructions: (1) increase the community spouse minimum monthly maintenance needs allowance from \$2,700 to \$3,162 effective 2/1/03 and (2) recalculate petitioner's cost of care, retroactive to 02/01/03, taking into account an increased community spouse income allocation of \$1,954 per month (community spouse monthly expenses of \$3,162 - community spouse monthly income of \$1,208 = amount needed from petitioner (community spouse income allocation)). This action shall be taken within ten (10) days of the date of this decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 11th day of
August, 2003

/sKenneth P. Adler
Administrative Law Judge
Division of Hearings and Appeals
924/KPA